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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1956

No. 830

JEWEL C. WOODS,
*Petitioner*
v.
UNITED STATES OF AMERICA,
*Respondent*

BOSSY GLOVER,
*Petitioner*
v.
UNITED STATES OF AMERICA,
*Respondent*

MARCELLUS L. WINSTON,
*Petitioner*
v.
UNITED STATES OF AMERICA,
*Respondent*

JAMES S. DAVIS,
*Petitioner*
v.
UNITED STATES OF AMERICA,
*Respondent*

BARBARA L. TOWLES,
*Petitioner*
v.
UNITED STATES OF AMERICA,
*Respondent*

GEORGE BELL,
*Petitioner*
v.
UNITED STATES OF AMERICA,
*Respondent*

OLIVER G. HOLSEY,
*Petitioner*
v.
UNITED STATES OF AMERICA,
*Respondent*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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In The

# Supreme Court of the United States

October Term, 1956

No. .....

Jewel C. Woods,
*Petitioner*
v.
United States of America,
*Respondent*

Bossy Glover,
*Petitioner*
v.
United States of America,
*Respondent*

Marcellus L. Winston,
*Petitioner*
v.
United States of America,
*Respondent*

James S. Davis,
*Petitioner*
v.
United States of America,
*Respondent*

Barbara L. Towles,
*Petitioner*
v.
United States of America,
*Respondent*

George Bell,
*Petitioner*
v.
United States of America,
*Respondent*

Oliver G. Holsey,
*Petitioner*
v.
United States of America,
*Respondent*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To: *The Honorable The Chief Justice of the United States and Honorable Associate Justices of the Supreme Court of the United States.*

The petitioners respectfully pray that a writ of certiorari

issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered December 31, 1956.

## OPINIONS BELOW

There was no opinion in the United States District Court for the District of Columbia.

The opinion of the United States Court of Appeals rendered December 31, 1956 is not yet reported, but is contained in the certified transcript of record submitted herewith. (R. 2-18)

The petition for re-hearing was denied by the Court of Appeals on February 8, 1957. (R. 21)

## JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia Circuit sought to be reviewed was dated and entered December 31, 1956. (R. 3)

The petition for re-hearing was denied February 8, 1957. (R. 21)

The jurisdiction of this Court is invoked under Section 1254 of Title 28 of the United States Code and Rule 37(b) of the Federal Rules of Criminal Procedure.

## QUESTIONS PRESENTED

1. Where illegally seized evidence is introduced against several joint defendants in federal prosecution, is reversal of conviction required as to only those defendants most closely connected with said evidence or as to all against whom it was used?

2. Where substantial error is committed in the trial Court by the admission into evidence of illegally seized property against all of several co-defendants can the appellate tribunal, after eliminating the tainted evidence, usurp the functions of the trial jury by evaluating the remaining evidence as sufficient to support the convictions?

3. Does the issuance of search and arrest warrants of the so-called "observation type" where nothing more is required as probable cause than the recital of numerous observations of behaviour which is innocent except when fertilized by numerous references to "known" or "suspected" numbers operators reduce the search warrant process to a pro forma procedure and mere token compliance with the Fourth Amendment?

## STATUTES INVOLVED

Title 18, Section 371, United States Code (1950 Edition) reads as follows:

*Section 371. Conspiracy to commit offense or to defraud United States.*

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

*Section 22-1501* [*6:151*]. *Lotteries—Promotion—Sale or possession of tickets.*

If any person shall within the District keep, set up, or promote, or be concerned as owner, agent, or clerk, or in any other manner, in managing, carrying on, promoting, or advertising, directly or indirectly, any policy lottery, policy shop, or any lottery, or shall sell or transfer any chance, right, or interest, tangible or intangible, in any policy, lottery, or any lottery or shall sell or transfer any ticket, certificate, bill, token, or other device, purporting or in-

tended to guarantee or assure to any person or entitle him to a chance of drawing or obtaining a prize to be drawn in any lottery, or in a game or device commonly known as policy lottery or policy or shall for himself or another person, sell or transfer, or have in his possession for the purpose of sale or transfer, a chance or ticket in or share of a ticket in any lottery or any such bill, certificate, token, or other device, he shall be fined upon conviction of each said offense not more than $1,000, or be imprisoned not more than three years, or both. The possession of any copy or record of any such chance, right, or interest, or of any such ticket, certificate, bill, token, or other device shall be prima facie evidence that the possessor of such copy or record did, at the time and place of such possession, keep, set up, or promote, or was at such time and place concerned as owner, agent, or clerk, or otherwise in managing, carrying on, promoting, or advertising a policy lottery, policy shop, or lottery.

*Section 22-1502* [*6:151a.*] *Possession of lottery or policy tickets, amended.*

If any person shall, within the District of Columbia, knowingly have in his possession or under his control, any record, notation receipt, ticket, certificate, bill slip, token, paper, or writing, current or not current, used or to be used in violating the provisions of sections 863, 865, or 869 of this Act, he shall, upon conviction of each such offense, be fined not more than $1,000 or be imprisoned for not more than one year, or both. For the purpose of this section, possession, of any record, notation, receipt, ticket, certificate, bill, slip, token, paper, or writing shall be presumed to be knowing possession thereof.

*Section 22-1505* [*6:154*]. *Permitting gambling table or device to be set up. (Amended—which reads in part)*

"(a) Any house, building, vessel, shed, booth, shelter, vehicle, enclosure, room, lot, or other premises in the Dis-

trict of Columbia, used or to be used in violating the provisions of Section 863 or 865 of this Act, shall be deemed 'gambling premises' for the purpose of this section.

(b) It shall be unlawful for any person in the District of Columbia knowingly, as owner, lessee, agent, employee, operator, occupant, or otherwise, to maintain or aid or permit the maintaining of any gambling premises."

*18 U. S. Code 3109. Breaking Doors or Windows for Entry or Exit.*

The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant. June 25, 1948, c. 645, 62 Stat. 820.

Federal Rules of Criminal Procedure, Rule 41(e).

(e) *Motion for Return of Property and To Suppress Evidence.*

A person aggrieved by an unlawful search and seizure may move the District Court for the District in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that (1) the property was illegally seized without a warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the District where the trial is to be had. The mo-

tion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

**United States Constitution**

Fourth Amendment to the Constitution:

> The rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment to the Constitution:

> No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, excepting cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation. Rule 41(e) F. R. Cr. P.

## STATEMENT OF THE CASE

In early February, 1954, officers of the Metropolitan Police Department Gambling and Liquor Squad made application to the U. S. Commissioner for certain arrest warrants and five search warrants for the following premises: 41 "L" Street, Northwest; 2126-10th Street, Northwest; 1628 "O" Street, Northwest; 54 "M" Street, Northwest; and 1304 Gallaudet Street, Northeast, all in the District of Columbia.

Supporting the application was a nine (9) page affidavit by the officers outlining their observations of the various

persons and the several premises on various dates between November 16, 1953 and February 1, 1954. (App. 1)

Appellants, prior to trial, filed timely motions to suppress the evidence because of a lack of probable cause for issuance of the warrants and also because of the illegal execution of the same. These were denied.

In the trial of the case certain items were admitted into evidence over the objection of the petitioners who contend that it was illegally received because the warrants were insufficient in law, improvidently issued, defective upon their face, were not supported by adequate probable cause, and that certain of the search warrants were illegally executed.

The affidavit begins with a receipt of a complaint that numbers bets were being written and picked up by a man known as Bossy Glover in the unit block of "M" Street, Northwest. The affiants were assigned to investigate the complaint and the affidavit allegedly reflects the results of the investigation. With the man Glover as a focal point all persons who came into contact with him and all premises frequented by him were observed for about two and a half (2½) months. In addition, several persons who made no contact with Glover were observed by the officers.

Obviously Bossy Glover and his activities formed the basis of a claim that they contaminated persons and places sufficiently for the purposes of arrest and search warrants.

Seasonable objections were made to the introduction of evidence against all petitioners.

Petitioners made motions for judgment of acquittal, which were denied.

Petitioners were charged, together with others not before this Court on appeal, with the violation of Title 18, Section 371, U.S.C.A. (Conspiracy statute) and Title 22, Section 1501, 1502, and 1505 of the D. C. Code. The charges were set forth in a thirty-one count indictment. All of the petitioners were convicted on COUNT TWO of the indictment which charged them with the joint and several viola-

tion of Title 22, Section 1501, continuously from November 26, 1953, to February 1, 1954. Seven petitioners: B. King, L. King, Towles, Holsey, Glover, Bell and Davis were also convicted of Conspiracy to violate Title 22, Section 1501, D. C. Code, during the same period of time. Holsey and Glover were also charged with violation of Title 22, Section 1501, D. C. Code, on specific days during said period from November 26, 1953, to February 1, 1954. Other Counts were for violation of Title 22, Sections 1501 and 1505, of the D. C. Code.

The Court imposed the following sentences: George Bell, eight months to three years; Curtis, nine to twenty-seven months; Davis, eight months to three years; Glover, six to eighteen months; Gross, nine to twenty-seven months; Holsey, seven to twenty-one months; Shay, one to three years; Towles, six to eighteen months; Winston, ten to thirty months; Woods, five to fifteen months; Burnie King was sentenced to twenty months to five years on the conspiracy count, and one to three years on Count II, concurrently.

The Circuit Court of Appeals for the District of Columbia Circuit reversed as to James Shay because of illegally seized evidence from the 10th Street premises; but the convictions of petitioners were affirmed.

It is from this judgment that petitioners appeal.

## REASONS FOR ALLOWING THE WRIT

Petitioners respectfully contend that this Honorable Court should allow this writ because the decision of the Circuit Court of Appeals for the District of Columbia is: (a) contrary to the express holdings by this Court relative to illegally obtained evidence admitted against codefendants in criminal trials in Federal Courts; (b) in conflict not only with decisions of this Court, but also with those of other Circuit Courts of Appeal, and indeed with its own recent decisions; and (c) concerned with matters of funda-

mental importance affecting the orderly administration of justice in the Federal Courts.

## ARGUMENT

### I

### The Use of Illegally Seized Evidence Against All of the Several Codefendants Requires Reversal of All Convictions Thus Obtained.

The decision of the Circuit Court of Appeals in this case is contrary to the holdings of this Court as set out in *McDonald* v. *United States,* 335 U.S. 451 (1948), 93 Led 153; and *Anderson* v. *United States,* 318 U.S. 350 (1943), 87 Led 829. In both these cases this Court reversed the convictions of all defendants because evidence illegally obtained from one *(McDonald* v. *United States,* supra) or some *(Anderson* v. *United States,* supra) was admitted against all for the purpose of convicting them.

Full recognition was given to this principle by the Circuit Court for the District of Columbia when it decided *Nelson* v. *United States,* 93 U.S. App. D.C. 14, 208 F. 2nd 505; and Judge Bazelon, who wrote the opinion in that case, reiterates it in sharp language in his dissent in the instant case when he states:

> "The unlawfully obtained evidence was used against all the appellants, and, if it may have helped to convict them, their convictions should be reversed." (R. 10)

In the face of the evidence in this case it is obvious that establishing 2126 10th Street, Northwest as a "counting house" and "numbers drop" was a main part of the prosecution's case against the jointly indicted defendants. The only direct evidence offered which established the 10th Street house as one of the (two) key links in "the chain with which the prosecution bound together these numerous appellants . . . ." (R. 14) was that taken in the illegal

seizure—including three "marked" dollar bills out of $786.13. Although so-called "marked money" in criminal prosecutions of this type has been traditionally regarded as evidence of the highest order of reliability and effectiveness, the Circuit Court's decision unrealistically discounts its weight.

It is suggested that when the Circuit Court undertook to evaluate the evidence against the petitioners, after eliminating that which should have been excluded, it assumed a responsibility reserved to the jury, and such assumption is not readily to be indulged in the Federal Courts. The failure to exclude the illegally seized evidence was more than a deviation from mere formal correctness which did not touch the substance of the standards by which guilt is determined in our courts. The failure to exclude was a departure from a constitutional norm and a specific command of Congress (Rule 41e FRCrP) within the meaning of the principles enunciated by this Court in *Kotteakos* v. *United States,* 328 U.S. 764; *Bruno* v. *United States,* 308 U.S. 294; and *Bollenbach* v. *United States,* 325 U.S. 607.

Petitioners urge that the Federal Rule is that if the illegal evidence could have reasonably influenced conviction, reversal is in order. When the appellate court undertakes to calculate the extent of damage done by the illegally seized and improperly admitted evidence, and then concludes that without the said evidence there was still enough to support the jury's verdict, it violates this rule. The test is not whether without the illegal evidence there was still enough to convict. It is rather that if the illegal evidence could have reasonably *influenced* conviction, reversal is in order. The refusal to apply this correct standard constitutes such a drastic departure in the conduct of federal trials as to invite examination by this Honorable Court for its express approval or rejection.

In addition to being at odds with the holdings of this Court, the Circuit Court's opinion is in direct opposition

to its very own *Nelson* v. *United States,* supra, which case is on all fours with the instant case. No attempt to reconcile them is made.

The Circuit Court of Appeals by pronouncing and affirming guilt based upon its reading of the record, despite the fact that error had been committed by the trial court, disobeyed a mandate often expressed by this Court, i.e., appellate courts are not to assert their own view of the facts on the basis of the cold record where there is an obligation to reverse convictions. *Bollenbach* v. *United States,* supra; *Weiler* v. *United States,* 323 U.S. 606; *Bihn* v. *United States,* 328 U.S. 633.

The several Circuit Courts of Appeals have harkened the Supreme Court's admonition as expressed in the above cases. *Booth* v. *United States* (9th Cir. 1946), 154 F. 2d 73; *United States* v. *Levi* (7 Cir. 1949), 177 F. 2d 133; and *Little* v. *United States,* (10th Cir.), 73 F. 2d 861. In this regard the instant decision is in conflict with those of this Court and those of other Circuit Courts of Appeals.

## II

**Probable Cause for the Issuance of a Search Warrant Does Not Exist When the Application Reasonably Reflects Neither the Identity of the Particular Crime, the Probable Connection of the Particular Parties Concerned or the Manner and Fact of Its Commission.**

The warrant for the search of 1628 O Street, N.W., may best be described as an "observation warrant," as distinguished from a warrant based on knowledge of the facts gleaned by other senses or from other sources. The contents of the affidavit may be summarized as follows:

All of the petitioners were observed[1] at some time, between November 1953, and February 1, 1954, with either

[1] Two of petitioners, Holsey and Parker, are shown to have sold "chances" to an undercover agent of the Police Department.

"bulging" pockets,[2] paper bags,[3] a large lady's pocket book[4] or a card board box,[5] in all of which the affiants stated they "believed" there reposed number slips.[6]

The affidavit further states that the affiants have "positive" knowledge that petitioner Glover is writing numbers and conveying them to a counting house, and that several of the petitioners are either "known" or "suspected", numbers "operators"; the affidavit does not reveal the source of this knowledge or the facts upon which these conclusions are based.[7]

In the District of Columbia and the facts of this case three cognate offenses here concerned may be involved. The lottery statute itself,[8] the possession of lottery tickets[9] and accepting a bet.[10] With reference to the lottery statute, which uses the term lottery in defining the offense, the elements of the offense are outlined in the cases of *France* v. *U. S.*, 164 U.S. 676, 41 L. Ed. 545; *Francis* v. *U. S.*, 188 U.S. 375, 47 L. Ed. 508, and *Fed. Com. Com.* v. *American Broadcasting Co.*, 347, U.S. 284, 74 S. Ct. 593. Cf. *Forte* v. *U. S.*, 65 App. D.C. 355.

The affidavit is replete with allegations of affiants' "belief" that all petitioners had "numbers slips" in their possession at various times up until issuance of the search warrant.[11] However, the possession of "numbers" or lot-

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[2] Winston, Shay, Glover, Davis.
[3] Wi[illegible]on, Bell.
[4] Jewel Woods (Miller).
[5] Barbara Towles.
[6] Referred to in the statute as a lottery ticket.
[7] These conclusions of the officers unattended and unsupported by facts or information effectively withdrew from the magistrate any opportunity to determine their sufficiency or reasonableness. Cf. *Nathanson* v. *U. S.*, 290 U.S. 41, 78 L. Ed. 159.
[8] Title 22, Section 1501.
[9] Title 22, Section 1502.
[10] Title 22, Section 1508.
[11] The great number of observations, extending over a long period of time, it seems, is employed in the fond hope that it will suffice to overcome in volume what the conduct and observed activity of petitioners lacked in critical substance.

tery tickets is a misdemeanor (Title 22, Sec. 1501, supra), and while probable cause is sufficient for issuance of an *arrest warrant* for this misdemeanor, as was recently authorized by Congress,[12] no constitutional or statutory permit exists for the issuance of a *search warrant* for a dwelling upon a showing of probable cause that a misdemeanor has been or is being committed.

Nothing in the affidavit reflects by way of information, facts, or circumstances that a felony rather than a misdemeanor had been or was being committed at 1628 O Street, N.W. The parties whom the affidavit shows "wrote" numbers never were observed entering or leaving 1628 O Street, N.W.

In a case similarly involving a misdemeanor and a felony (which also concerned a lottery offense by a man whose prior conviction for this type of gaming was known, and information as to his current conduct of the lottery games was at hand), the Fifth Circuit, in *Clay* v. *U. S.*, 239 Fed. 2d 196 (1956), reached the opposite result on the issue of probable cause. In determining whether a misdemeanor or a felony was indicated (failing to register or failing to pay gaming tax), the Court points out the failure of the information and facts to supply the critical distinction between the felony and misdemeanor (notwithstanding a showing that Clay had neither registered nor had he paid the gaming tax) as fatal to a showing that a felony had been committed, because other elements of the felony were absent. Similarly here, there is no showing by affidavit of probable cause that a felony lottery offense had been or was being committed in light of the failure of the affidavit to reasonably establish the elements of the offense of lottery.

Reliance on the bare existence of a probability, based on the doctrine of chance rather than reason, serves only to

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[12] Title 23, Section 306(b), D. C. Code (1951 ed.).

degenerate and disembody the constitutional criteria. To transmute the possession of number slips into the felony requires a charge and proof of facts which lift the offense to the degree of a felony. *Spies* v. *U. S.*, 317, U.S. 492, 87 L. Ed. 418; *Clay* v. *U. S.*, 218 Fed. 2d 483 (5th Circuit). The rule that probable cause for a search warrant may not be calipered so as to afford a precise gauge, does not downgrade constitutional requirements to the level where they are met and satisfied by a voluminous hodge-podge of suspected criminal activity.

So, however legally unbridled of definition the concept of probable cause may necessarily be, there would seem to be no reason to inject the element of uncertainty of the identity of the offense whose commission it is expected to show.

Finally, while it is difficult in ordinary cases to pinpoint the evidence which convicts a defendant after trial, in lottery cases the unavailability to the prosecution of the product of the search generally ends the case.[13] This is apparent when, in lottery cases, the government confesses that the search produces evidence indispensable to the prosecution of the crime. They so conceded, in effect, at trial and have contended in the appellate Court below and before this Court, that the search warrant produces the only evidence upon which they can proceed. A search whose only purpose and effect is to secure evidence, otherwise unavailable, would seem to be unreasonable. This result is the necessary product of a criminal process inaugurated and supported on suspicion alone. Cf. *Go Bart Imp Co.* v. *U. S.*, 282 U.S. 344, 75 L. Ed. 374.

In challenging sufficiency of the affidavit special com-

[13] In *Stewart and Carroll* v. *U. S.*, #571, now in this Court for review by certiorari, the suppression of the product of the search brought a confession by the government that they could not proceed despite the observations, brown paper bags, and bulging pockets. Upon this determination they claimed the loss of the right to use the numbers slip seized finally disposed of their case.

plaint is leveled at the generous sprinkling of the terms "known" and "suspected" numbers operators as a device. These terms were credited with sufficient weight by the trial court below to make the difference between "adequate probable cause" and "insufficient probable cause." In advancing this point petitioners are aware that the Fourth Amendment prohibits only "unreasonable" searches, and that there is no fixed formula available for determining the reasonableness of a search. This latter is all important, because with or without a warrant the test of legality of a search is whether or not it is reasonable. And in this connection the only justification for a search is probable cause to believe that crime is or has been committed and that the fruits of the crime or instrumentalities used in committing it will be revealed by the search.

This Court has stated that "there is no litmus-paper test" . . . and "the recurring questions of the reasonableness of searches must find resolution in the facts and circumstances of each case." *United States* v. *Rabinowitz,* 339 U.S. 56, 63.

Equally apparent is the fact that the mere formality of issuance of a warrant to search is not enough to satisfy Constitutional requirements. The required affidavit in support of the application for the warrant must set out the "facts and circumstances," so that they may be tested for their sufficiency to show probable cause.

This places a high premium on the facts rather than conclusions. If some "known" or "suspected" or "positive" fact is required to raise the affidavit to the level of sufficiency, the affiant may not fertilize his recital of observations by merely seeding it with a generous sprinkling of private conclusions, and thus hide the operative facts from the critical eye of the judicial officer who measures for probable cause.

To allow this type of token compliance with the Constition is to expose the public to zealous, suspicious, and some-

times ruthless accusers. Such devices water down the requirements of "probable cause"; and are respectfully brought to the attention of this Court as the type of "stealthy encroachment" upon the Fourth and Fifth Amendments repeatedly warned against heretofore.

## CONCLUSION

It is respectfully submitted that the foregoing reasons indicate a real need for clarification by this Court of the issues raised in the instant case, and that in the interest of the orderly administration of justice in the District of Columbia the writ should be granted.

William B. Bryant
Henry Lincoln Johnson, Jr.
*By*: Henry L. Johnson, Jr.
*Counsel for Petitioners*
307 E Street, N.W.
Washington 1, D. C.
DIstrict 7-8000

# APPENDIX

---

United States of America

v.

2126 10th St., N. W. (entire premises) occupied by Bernie King and Janie E. Owens

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*Affidavit for Search Warrant*

Commissioner's Docket No. 16
Case No. 7918

---

BEFORE Cyril S. Lawrence
(Name of Commissioner)

U. S. Court House, Washington, D. C.
(Address of Commissioner)

---

The undersigned being duly sworn deposes and says:

That he (has reason to believe) that (on the premises known as) 2126 10th St., N. W. (entire premises) Washington, in the District of Columbia there is now being concealed certain property, namely lottery tickets, lottery policies, or any book, paper, memorandum, or device used in setting up, promoting, or maintaining a policy lottery. The facts to sustain this are as set forth in the affidavit attached hereto and made a part hereof. [Received Feb. 9, 1954] which are in violation of DCC T. 22, Sec. 1501 and 1502 (here give alleged grounds for search and seizure)

And that the facts tending to establish the foregoing

grounds for issuance of a Search Warrant are as follows: See the affidavit attached hereto and made a part hereof.

/S/ Pvt. Generalee Robinson,
Morals Div. MP

/S/ Pvt. Burtel M. Jefferson,
Morals Div. MP

/S/ Pvt. Tarver J. Thomas,
Morals Div. MPDC
(Signature of Affiant)

Sworn to before me, and subscribed in my presence, Feb. 3, 1954.

/S/ Cyril Lawrence
United States Commissioner

---

**Statement of Facts Relative to Request for U. S. Commissioner's Arrest and Search Warrants for the Following Individuals and Premises for Violations of the Lottery Laws of the District of Columbia.**

**Arrest Warrants**

Bernie King, colored, 2213 9th St., N. W., Washington, D. C.

Bossy Glover, colored, 41 L. St., N. W., Washington, D. C.

James Shay, colored, 1921 M St., N. W., Washington, D. C. (Apt. 4)

Larkin King, colored, 2213 9th St., N. W., Washington, D. C.

James Davis, colored, 12 N Street, N. W., Washington, D. C.

Wilbert Gross, colored, 2201 2nd St., N. W., Washington, D. C.

Marcellus Winston, colored, 2242 12th St., N. W., Washington, D. C.

Jewel C. Miller, colored, 5 Adams St., N. W., Wash. D. C.

Christine Curtis, colored, 2705 12th St., N. E., Washington, D. C.

Barbara Towles, colored, 4617 Clay St., N. E., Washington, D. C.

George Bell, Col., 1304 Gallaudet St., N. E., Apt. 201, Wash., D. C.

John Doe #1, known as Mack, colored, 35-40 yrs., dark brn skin, 5'10", 190 lbs., wears eyeglasses—driver of Tri-Cab #130

**Search Warrants**

41 L St., N. W., Wash., D. C. (entire premises) occupied by Bossy Glover

2126 10th St., N. W. (entire premises) occupied by Bernie King & Janie E. Owens

1628 O St., N. W., Wash., D. C. (entire 1st floor) occupied by Jewel C. Miller and Benjamin T. Lewis

54 M St., N. W., Wash., D. C. (basement, janitor's qtrs) occupied by Oliver Holsey

1304 Galleudet St., N. E., Wash., DC (entire premises of Apt 201, occupied by George Bell

Having received a complaint that number bets were being written and picked up by a colored man known as Bossy Glover in the unit block of M Street, N. W., Washington, D. C., Pvts. Tarver J. Thomas and Burtell M. Jefferson, MPDC, Morals Division, were assigned to make an investigation.

About 1:30 p.m., Nov. 16, 1953, Pvt. Tarver J. Thomas observed Bossy Glover come out of 41 L St., N. W., get into a 1946 Chevrolet Sedan, D. C. tags 3-3565, listed in the name of Bossy Glover, 41 L St., N. W., at which time the coat pocket of Glover was seen to have a very noticeable bulge, which was believed to have been caused by number slips or other numbers paraphernalia, and drive off. He was followed to the unit block of M Street, N. W., parked his

car, and entered 54 M St., N. W. remained about five minutes, returned to his car with coat pocket still bulging, and was followed to North Capitol and P St., N. W., where he parked and entered 33 P Street, N. E. He remained in these premises about five minutes, came out with coat pocket still bulging, and then went to and entered 21 P St., N. E. He remained in those premises about five minutes, and when he left there was a noticeable bulge in his right pants pocket, believed to have been caused by number slips or other numbers paraphernalia. He then entered #6 P St., N. E., remained about five minutes, came out with pockets still bulging, got into his car, and was followed to the 1000 block of Euclid St., N. W., where he parked. He got out of his car with pockets still bulging and entered 1014 Euclid St., N. W. About 10 minutes later a 1952 Plymouth Sedan, DC E-681 (listed to Larkin King, 2213 9th St., N. W.) operated by James Shay, a known numbers operator, parked in the 2700 block of 11th St., N. W. Shay then got out of this car and was observed to enter 1014 Euclid St., N. W. About five minutes later Bossy Glover was seen to come out of these premises and at this time his pockets were not bulging. He was accompanied by an unidentified colored man and both got in Glover's car and drove off. About two minutes later Shay came out of these same premises with a large bulge noted in the right side of his suit coat, believed to be number slips or other numbers paraphernalia, got in the 1952 Plymouth Sedan, D. C. #E-681 and drove off.

About 1:30 p.m., November 17, 1953, pvts. Thomas and Jefferson observed Bossy Glover come out of 41 L Street, N. W., with pockets bulging, and he followed the same pattern as regards his stops as he did on Nov. 16, 1953. After leaving #5 P Street, N. E., he returned to his car and drove off, with pockets still bulging. He was lost in traffic at North Capitol and Bates St., N. W.

About 1:30 p.m., Nov. 18, 1953, Pvt. Thomas observed

Bossy Glover come out of 41 L St., N. W., with pockets bulging, and he followed the same pattern as regards his steps as he did on Nov. 16th and 17th, 1953. After he made his last stop at #5 P St., N. E., he was followed back to 41 L St., N. W. About 2:20 p.m., Pvt. Thomas observed Glover enter the rear of 41 L St., N. W. He remained inside for about five minutes, then came out of the rear of these premises, and at that time a 1941 Studebaker Sedan, bearing D. C. tags K-5921 (listed to James Davis, 12 N St., N. W.) and being operated by James Davis, a known numbers pickup man, parked in the alley rear of 41 L St., N. W. Davis got out of his car and Glover turned over to him a large brown paper bag, believed to contain number slips or other numbers paraphernalia, which Davis then placed in the trunk of his Studebaker Sedan. Davis then got in his car and drove off. At this time, Glover got into his car (Chevrolet Sedan, D. C. 3-3565) and also drove off. He was followed to the 1000 block of W St., N. W., where he parked, got out of his car with pants pockets bulging and was seen to enter 2126 10th St., N. W. through the rear. The officers had previous reliable information that premises 2126 10th St., N. W., were being used as a numbers drop, and counting house for the money received from number bets. At 3:00 p.m., Glover was seen to come out of 2126 10th St., N. W., get in his car and drive off. About the same time, James Shay was seen to walk north on 10th St., N. W., with pockets bulging, believed to contain number slips and money, and enter 2126 10th St., N. W. At 3:30 p.m., George Bell, a suspected numbers writer, driving a 1952 Oldsmobile Sedan, D. C. tags 1-2444 (listed to Mary Bell, 1304 Galluadet St., N. E.) parked his car at 10th and V Sts., N. W., got out of his car carrying a brown paper bag, believed to contain number slips and money, and entered 2126 10th St., N. W. He remained in the premises about five minutes, then came out without the brown paper bag, got in his car and drove off.

About 1:45 p.m., Nov. 19, 1953, Officers Thomas and Jefferson observed Bossy Glover park at North Capitol and P Street, N. W., and get out of his car and enter 33 P Street, N. E., remain there about five minutes, come out and then enter 21 P Street, N. E. He came out of these premises and was seen to enter #9 P St., N. E., remained inside about five minutes, then came out with his pockets noticeably bulging. He then entered #6 P Street, N. E., remained inside about five minutes, came out, returned to his car with pockets still bulging, and was then followed to the rear of 41 L Street, N. W., where he got out of his car and entered 41 L Street, N. W. About 2:20 p.m. Glover came out of the rear of 41 L Street, N. W., and about three minutes later the 1941 Studebaker Sedan, K-5921, driven by James Davis, parked in the rear of 41 L Street, N. W. Davis got out of his car, walked over to Glover, and Glover handed him a large brown paper bag, believed to contain number slips, money, or other numbers paraphernalia. Davis then got back in his car and drove off. About 2:30 p.m., Officers Thomas and Jefferson went to the vicinity of Tenth and W Streets, N. W., and at about 2:35 p.m., this date, Officers Thomas and Jefferson observed Bossy Glover, who was known to be picking up numbers, park the Chevrolet Sedan, DC 3-3565 on the north side of the 1100 block of W Street, N. W., walk south through an alley and enter the rear of premises 2126 10th Street, N. W.

About 2:45 p.m., Nov. 19, 1953, James Shay was seen to enter 2126 10th Street, N. W., with his overcoat pocket bulging, believed to be caused by number slips.

About 2:47 p.m., Nov. 19, 1953, Bernie King was seen walking north in the 2100 block of 10th St., N. W. carrying a large brown paper bag, believed to have contained number slips or numbers paraphernalia, which he took into premises 2126 10th St., N. W.

About 2:50 p.m., Nov. 19, 1953, Bossy Glover was seen

to leave the rear of premises 2126 10th St., N. W., get into his car and drive off.

About 3:13 p.m., November 19, 1953, Moultrie Wilson, a known numbers operator, was seen to drive north on 10th St., N. W., in a 1952 Ford Sedan, DC J-707, park abreast in this block, and enter premises 2126 10th St., N. W., carrying a small brown paper bag, believed to contain number slips or other numbers paraphernalia. He remained in these premises about 2 minutes, returned to his car without the bag, and drove off.

About 3:25 p.m., Nov. 19, 1953, George Bell, a suspected numbers writer, was seen to drive north on 10th St., N. W., make a "you" turn at W Street, N. W., and stop in front of 2126 10th St., N. W., at which time an unidentifid colored man who was a passenger on the front seat of this car was seen to carry a brown paper bag, believed to contain number slips, into premises 2126 10th St., N. W. He remained inside about two minutes, came out minus the brown paper bag, got back into the car, and was driven out of the area.

At about the same time on November 20th and 21st, 1953, Officers Thomas and Jefferson observed the same procedure take place involving the same persons as that which occurred on November 19, 1953.

About 2:45 p.m., Dec. 11, 1953, Pvts. Thomas and Jefferson followed Bossy Glover from his home at 41 L St., N. W. to the vicinity of 11th and W Sts., N. W. where he parked the Chevrolet Sedan, DC 3-3565, and then got out and entered the rear of 2126 10th St., N. W. with his pants pocket noticeably bulging, believed to have been caused by number slips or other numbers paraphernalia.

About 2:50 p.m., Dec. 12, 1953, Pvt. Thomas again followed Bossy Glover from his home at 41 L Sts., N. W. to the vicinity of 11th and W Sts., N. W., where he parked his Chevrolet Sedan, D. C. 3-3565, got out and entered 2126 10th St., N. W. from the rear.

About 3:10 p.m., Dec. 12, 1953, James Shay was observed operating a 1952 Plymouth Sedan DC tags E-681, which he parked on the corner of 10th and W Sts., N. W., got out of same and entered premises 2126 10th St., N. W., at which time the right pocket of his overcoat had a noticeable bulge, believed to be caused by number slips or other numbers paraphernalia.

About 3:12 p.m., Dec. 12, 1953, Bossy Glover and an unidentified colored man were seen to leave the rear of 2126 10th St., N. W., enter Glover's car and drive off. About 3:22 p.m., Dec. 12, 1953, Tri-Cab No. 130, DC H-9681, with Bernie King as a passenger in same, stopped at the corner of 10th and W Sts., N. W., and Bernie King got out with his overcoat pockets bulging and entered 2126 10th St., N. W.

About 3:23 p.m., Dec. 12, 1953, two unidentified colored men were seen to enter 2126 10th St., N. W., carrying brown paper bags, believed to contain number slips or other numbers paraphernalia.

About 3:24 p.m., Dec. 12, 1953, an unidentified colored man wearing a chauffeur's uniform, parked a Buick Sedan, bearing Government Tags 7656, in front of 2126 10th St., N. W., and entered same carrying a brown paper bag, believed to contain number slips or other numbers paraphernalia.

About 3:30 p.m., Dec. 12, 1953, an unidentified colored woman entered premises 2126 10th St., N. W., carrying a brown paper bag, also believed to contain number slips or other numbers paraphernalia.

About 3:00 p.m., Dec. 14, 1953, Pvt. Thomas returned to the vicinity of 10th and W Streets, N. W., and observed Bossy Glover enter the rear of premises 2126 10th St., N. W., with his coat pockets noticeably bulging. About 3:10 p.m., this date, an unidentified colored man left 2126 10th St., N. W. by the front door. About 3:12, p.m., this date, Glover and an unidentified colored man left 2126 10th St., N. W.,

by the rear, got into Glover's car and drove off. About 3:15 p.m., this date, James Shay parked the Plymouth Sedan, E-681, at 10th and W Sts., N. W., and entered 2126 10th St., N. W., with his coat pockets noticeably bulging. About 3:25 p.m., Bernie King got out of Tri-Cab No. 130 at the corner of 10th and W Sts., N. W. and entered 2126 10th St., N. W., with his coat pockets bulging. At 3:30 p.m., this same date, Bernie King came back out of 2126 10th St., N. W., his pockets did not have any bulge, got into Tri-Cab No. 130 and was driven off.

About 2:40 p.m., Dec., 16, 1953, Pvts. Thomas and Jefferson followed Bossy Glover from 41 L St., N. W., to the vicinity of 10th and W Sts., N. W., where he parked his Chevrolet sedan, D. C. 3-3565, and entered premises 2126 10th Sts., N. W. from the rear with his pockets bulging. About 3:15 p.m., this date, James Shay was seen to enter 2126 10th St., N. W. by way of the front door, with his overcoat pockets bulging. About 3:20 p.m., this date, Bossy Glover was seen to leave the rear of premises 2126 10th St., N. W., accompanied by an unidentified colored man, got in Glover's car and drove off. At this time, Glover's pockets did not have the bulge. About 3:45 p.m., this date, Bernie King was seen to enter 2126 10th St., N. W., with his pockets bulging. At 4:15 p.m. this date, Bernie King left premises 2126 10th St., N. W., without his pockets bulging, got into Tri-Cab No. 130 and was driven off. About 6:00 p.m., this date, James Shay was seen to leave premises 2126 10th Street., N. W., and at this time his pockets were not bulging.

Having positive knowledge that number plays were being made with Bossy Glover and in turn transferred to a man known to the officers as James Davis, who then carried these numbers to the counting house, Pvts. Thomas and Jefferson continued their investigation and observations.

About 2:10 p.m., Dec. 26, 1953, Officers Thomas and Jefferson observed Bossy Glover's car, 1946 Chevrolet Sedan, DC 3-3565, parked in the unit block of P Street,

N. E. About 2:12 p.m., Glover was seen to walk to his car at which time his coat pockets were seen to have a very noticeable bulge. This car was then followed by the officers north on North Capitol St., west on Bryant St., N. W., and when in the vicinity of Fourth and Bryant Streets, N. W., he was observed to stop. At this time, a colored man known to us as James Davis was seen to approach Glover's car, his overcoat pockets having a very decided bulge. Davis then got in the passenger side of the car and this car was followed and lost in traffic. About 2:40 p.m., this date, Glover was seen to park his car on 11th Street, N. W., and enter the rear of 2126 10th St., N. W. with his pants pockets bulging. About 6:20 p.m., this date, officers Thomas and Jefferson observed a 1954 Plymouth Sedan, Dealer's Tags D-2263, listed to Charles Shorter, 2266 9th Street, N. W., driven by a man known to them as Larkin King, a known numbers operator, in the area of 10th and W Streets, N. W. This car had as passengers in same Bernie King, Marcellus Winston, Wilbert Gross, and James Davis, all known numbers operators. When at the front of premises 2126 10th St., NW, the car stopped, and Bernie King and Marcellus Winston got out of the same, entered 2126 10th St., N. W., both carrying brown paper bags, believed to contain numbers slips or other numbers paraphernalia. This car then was observed to drive off and was followed to the alley, rear of 400 block of W Street, N. W., where Wilbert Gross and James Davis left this Plymouth and entered a 1941 Studebaker, DC Tags K-5921 (listed to James Davis) and drive off.

About 2:15 P.M., Dec. 28, 1953, Pvts. Thomas and Jefferson observed Bossy Glover driving west in the 300 block of Bryant St., N. W., and when at the corner of Fourth and Bryant Streets, N. W., he was observed to stop his car and was met by James Davis, who approached Glover's car with his overcoat pockets having a noticeable bulge,

and Davis entered the car. The car was then driven off and lost in traffic.

About 2:10 p.m., Dec. 29, 1953, Officers Jefferson and Thomas returned to the vicinity of Fourth and Bryant Streets, N. W. About 2:15 p.m., they observed Bossy Glover operating the Chevrolet Sedan DC 3-3565, west on Bryant Street, N. W., and when in front of Freedman's Hospital, he turned his car around and headed back east on the same street on which he was travelling. Glover then pulled in behind a bus and parked his car. James Davis was then seen to walk around the side of the bus and ran over to Glover's car. Glover gave him a large brown paper bag, believed to contain number slips or other numbers paraphernalia, and Davis placed same in his overcoat pocket. Davis then boarded this bus and Glover drove off in his car. This bus was followed to 17th and P Streets, N. W., where James Davis was observed to get off, walk south on 17th Street, with his clothes pockets still bulging, and enter 1628 O Street, N. W., 1st floor. About 6:00 p.m., this same date, Officers Jefferson and Thomas returned to the vicinity of 1600 block of O Street, N. W. to make further observations. About 6:10 p.m., they observed a 1954 Plymouth Sedan, bearing D. C. Tags H-9928, and being operated by Larkin King, drive through this block on two occasions. On a third occasion he was observed to stop in alleyway 1600 block of O Street, N. W. At about 6:15 p.m. the Officers observed the following persons leave premises 1628 O St., NW, carrying brown paper bags, believed to contain number slips or other numbers paraphernalia and enter the 1954 Plymouth Sedan, DC N-9928: Bernie King, Marcellus Winston, Wilbert Gross and James Davis. This car was then followed to the 2100 block of 10th St., N. W. where Bernie King and Marcellus Winston got out of the car carrying the brown paper bags, and entered the 400 block of W St., N. W. and at this time James Davis and Wilbert Gross were seen to leave same and enter the Stude-

baker K-5921 which was parked on the lot. This car was then driven off.

About 2:10 p.m., Dec. 30, 1953, Officer Thomas returned to the vicinity of 4th and Bryant St., N. W., where he observed James Davis walking east on Bryant St., N. W., in the 300 block, his coat pockets bulging, and about the same time, Larkin King was observed as a passenger in Tri-Cab #130, going east on Trumbull St., N. W., into the 300 block of Bryant St., N. W. At about 2:12 p.m., Pvt. Thomas observed James Davis in the Chevrolet Sedan, DC 3-3565, and being operated by Bossy Glover, going west on Bryant St., N. W. south on 4th St., N. W. where the car and passengers were lost in traffic.

On this date, Dec. 30, 1953, at about 2 p.m., Officer Jefferson went to the vicinity of the 1600 block of O St., N. W., to observe the premises 1628 O St., N. W. At 2:10 p.m., he saw a black Plymouth Sedan, D. C. tags N-7226 (listed to Charlsie M. King, 1747 Willard St., N. W.) and being operated by Bernie King, drive through this block. About 2:20 p.m., Christine Curtis, a known female numbers operator, was observed walking west through the 1600 block of O St., N. W., having in her possession a large brown paper bag which was believed to contain number slips or other numbers paraphernalia and which she carried in her left hand. She was seen to enter premises 1628 O St., N. W., and a few minutes after her arrival in this address, a light in the front room on the first floor was seen to go on. At about 2:27 p.m. a woman known as Jewel Miller was seen walking east in the 1600 block of O St., N. W., having in her possession a large brown leather pocketbook with a drawstring top which was slung over her left shoulder and believed to contain number slips or other numbers paraphernalia. She entered premises 1628 O St., N. W., carrying the pocketbook. About 2:35 p.m., Wilbert Gross, a known numbers operator, was seen walking west in the 1600 block of O St., N. W., with his coat pockets bulging. He was seen to enter

premises 1628 O St., N. W., 1st floor. At 2:40 p.m., James Davis was seen walking west in the 1600 block of O St., N. W., with his overcoat pockets bulging, and was observed to enter premises 1628 O St., N. W. At 2:42 P.M., Barbara Towles, a known female numbers operator, was observed walking west in the 1600 block of O St., N. W., having in her possession a grey cardboard box which she carried in her left hand. It is believed that this box contained number slips or other numbers paraphernalia. She was then observed to enter 1628 O St., 1st floor, carrying the cardboard box. About 2:45 p.m., Dec. 30, 1953, Officer Jefferson observed Marcellus Winston, a suspected numbers operator, walking west in the 1600 block of O St., N. W., having in his right hand a large brown paper bag believed to contain number slips or other numbers paraphernalia, and he was seen to enter premises 1628 O St., N. W., 1st floor. About 3:00 p.m., Officer Jefferson observed Tri-Cab #130, with Larkin King seated on the front seat, stop in front of premises 1628 O St., N. W., and King got out carrying a large brown paper bag in his right hand, believed to contain number slips or numbers paraphernalia, and entered 1628 O St., N. W., 1st floor. He remained inside about 3 minutes, returned to the cab minus the bag, and then the cab went west on O St., N. W., with Larkin King still a passenger. The premises were kept under observation until 3:45 p.m., and no other persons were seen to enter or leave after Larkin King's departure.

About 2 p.m., Dec. 31, 1953, Officer Jefferson returned to the vicinity of the 1600 block of O St., N. W., and about 2:20 p.m. observed Barbara Towles walking east in the 1600 block of O St., N. W. carrying a brown paper bag in her left hand, believed to contain number slips or numbers paraphernalia. She entered 1628 O St., N. W., 1st floor, with this bag. In about 2 minutes she came out and did not have the paper bag in her possession She walked west on O St., N. W. and out of view. About 5 minutes later she

was seen walking east on O St., N. W. having in her possession a magazine with a red cover and reentered 1628 O St., N. W. About 2:28 p.m., Jewel Miller was seen walking east in the 1600 block of O St., N. W., having in her possession a large drawstring pocketbook that she had been seen to carry on Dec. 30, 1953, and entered 1628 O St., N. W., 1st floor. About 2:30 p.m., Wilbert Gross was observed walking west in the 1600 block of O St., N. W., wearing a blue sport jacket, the pockets of which were noticeably bulging. He was seen to enter 1628 O St., N. W. At 2:33 p.m., Christine Curtis was observed walking east in the 1600 block of O St., N. W., carrying a large brown paper bag, believed to contain number slips or numbers paraphernalia. She entered premises 1628 O St., N. W., with the brown paper bag still in her possession. About 2:37 p.m. James Davis Walked east in the 1600 block of O St., N. W. wearing a blue overcoat, the pockets of which were bulging, and entered 1628 O St., N. W. About 2:47 p.m., Marcellus Winston walked east in the 1600 block of O St., N. W., wearing a brown topcoat, with his right hand in pocket of same as if he was concealing something therein. Before entering 1628 O St., N. W., he took from underneath his coat a brown paper bag and entered 1628 O St., N. W., this bag believed to contain number slips or other numbers paraphernalia. About 3:05 p.m., Tri-Cab #130, with Larkin King as a passenger on the front seat, stopped in front of 1628 O St., N. W., and King got out carrying a brown paper bag and entered 1628 O St., N. W., 1st floor. He remained inside about 3 minutes, came out, got back in the cab minus the bag, and then went east on O St., N. W. These premises were kept under observation until 3:45 p.m. and no other persons were seen to enter or leave after Larkin King's departure.

About 1:45 p.m., Jan. 4, 1954, Pvts. Thomas and Jefferson observed Bossy Glover park the Chevrolet, DC 3-3565, in the unit block of M St., N. W., leave same, and enter prem-

ises 54 M St., N. W. He remained inside about 10 minutes, after which he left the building, got into his car, and drove off. He was followed to the unit block of P St., N. E., where he again parked his car, got out, and was seen to enter #5 P St., N. E. About 15 minutes later, Glover was seen returning to his car, at which time it was noticed that the pocket of his jacket had a large noticeable bulge. Glover then entered his car and drove off, and was followed to the vicinity of 1st and O Sts., N. W., where James Davis entered his car at this point. They both then drove off. About 2:45 p.m., this same date, Bossy Glover was seen to park his car in the vicinity of 11th and W Sts., N. W., and enter premises 2126 10th St., N. W., from the rear.

About 1:45 p.m., Jan. 14, 1954, Bossy Glover was seen to leave 41 L St., N. W. enter his car and drive to the unit block of M St., N. W. where he parked, and was then seen to enter 54 M St., N. W. where he remained inside about 10 minutes. When Glover returned to his car, he was followed to the unit block of P St., N. E., where he was then seen to enter #7 P St., N. E., basement and remained about 5 minutes. Glover was then observed to leave those premises with his coat pockets bulging, and walked east on P St., N. E. He was seen about 10 minutes later entering his car with pockets still bulging, after which he left the area.

About 10:15 a.m., Jan. 18, 1954, Pvt. Generalee Robinson, MPDC, Morals Division, went to the basement of 54 M St., N. W., after having received reliable information that the persons occupying the janitor's quarters at this address were writing numbers and turning them in to Bossy Glover. While therein Officer Robinson contacted a colored woman, dark brown skin, 5′5″, 130 lbs., 39 yrs., called Rose, who will hereinafter be referred to as Jane Doe #1. Pvt. Robinson was able to make the following number bets with this woman: 200 for 25¢ and 643 for 25¢. Pvt. Robinson received a copy of his plays on the flap of a white envelope which had been written on same by this colored woman who then

recorded the number bets on a white envelope along with other numbers. About 1:45 p.m., this date, Pvts. Thomas, Jefferson and Robinson observed Glover park his car in the unit block of M St., N. W., and enter 54 M St., N. W., and at this time he was followed by Pvt. Robinson and seen to enter the janitor's quarters in the basement. Glover remained in the premises about 10 minutes, after which he returned to his car with coat pockets bulging, and drove away. He was followed to the unit block of P St., N. E., and seen to enter #5 P St., N. E., where he remained about 5 minutes, came out with pockets still bulging, and then was seen to enter #7 P St., N. E., where he remained about 5 minutes, came out, and walked east on P St., N. E. Glover was later seen entering his car with pockets still bulging and drove off.

About 11:00 a.m., Jan. 19, 1954, Pvt. Robinson returned to 54 M St., N. W., Janitor's quarters, contacted Jane Doe #1, and played 200 for 25¢ and 643 for 25¢ with her, paying her the sum of 50¢. Jane Doe #1 recorded the plays on a white envelope and gave Pvt. Robinson a receipt for same on a piece of the flap of the same envelope. Pvt. Robinson then left the premises. About 1:45 p.m., this date, Bossy Glover was seen to park in unit block of M St., N. W., and then enter premises 54 M St., N. W. where Pvt. Robinson observed him enter the Janitor's quarters and remain about 10 minutes, after which he left with his pockets bulging, got back in his car and drove off.

About 10 a.m., Jan. 20, 1954, Pvt. Robinson returned to 54 M St., N. W., janitor's quarters, contacted a colored man, described as light brown skin, 5'6", 140 lbs., 38-40 yrs., slender build, who will hereinafter be referred to as John Doe #2, and Pvt. Robinson played 200 for 25¢ and 643 for 25¢ with this man, paying him the sum of 50¢. The numbers were recorded on a pink slip of paper which also contained other number bets by this colored man. Pvt. Robinson was given a copy of his plays on a piece of this

same pink paper. The officer then left the premises, and later observed Bossy Glover enter the janitor's quarters of these premises about 1:45 p.m. this date.

About 11:30 a.m., Jan. 21, 1954, Pvt. Robinson returned to janitor's quarters, of 54 M St., N. W., again contacted John Doe #2 and played with him the numbers 200 for 10 cents and 643 for 15 cents, paying this man the sum of 25¢. John Doe #2 recorded the bets in a regular numbers book, gave Pvt. Robinson a duplicate slip for same, which bore the code number 54 in upper right-hand corner of the slip. About 1:35 p.m., this date, Pvt. Robinson again saw Bossy Glover enter the janitor's quarters of the premises, come out after about 10 minutes, enter his car, and drive off.

About 1:30 p.m., Jan. 23, 1954, Pvt. Robinson again returned to 54 M St., N. W., janitor's quarters, contacted John Doe #2 and again played with this man the numbers 200 for 10 cents and 643 for 15 cents, giving him the sum of 25 cents. This man recorded the plays in a regular numbers book, giving Pvt. Robinson a duplicate slip which bore the code number 54 in upper right-hand corner. Pvt. Robinson then left the premises and later observed Bossy Glover enter the janitor's quarters at about 1:40 p.m., this date. About 5 minutes later, Glover came out with jacket pockets bulging, got in his car, and drove off.

About 1:30 p.m., Jan. 25, 1954, Bossy Glover parked his car in the unit block of M St., N. W., and Officers Robinson and Thomas observed him enter 54 M St., N. W., stayed about 10 minutes, came out, got in his car and drove off, and it was noted that his coat pockets were noticeably bulging. He was followed to North Capitol & P Sts., N. E., where he parked his car, and was later seen to enter #5 P St., N. E., About 10 minutes later Glover was observed to return to his car with pockets still bulging and drive to the 1400 block of First St., N. W., where he parked, and at this time James Davis was observed to get into Glover's car, remain about 2 minutes, get out and walk to 1st and P Sts., N. W., with his clothes pockets bulging, and get

into his own car and drive off. Davis was followed to 11th & O Sts., N. W., where he parked his car, got out, with pockets still bulging, and walked to 11th & P Sts., N. W., where he boarded a west-bound bus. Davis was later seen to leave this bus at 17th & P Sts., N. W., walk south on 17th St., N. W., and enter 1628 O St., N. W., At about 6:50 p.m., this date, Larkin King was seen driving 1954 Plymouth Sedan, D. C. Tags N-9928, in the 1600 block of O St., N. W., circling the block. About 6:55 p.m., Jewel Miller, Christine Curtis and Barbara Towles, came out of first floor apartment of 1628 O St., N. W. Christine Curtis and Jewel Miller walked west on O St., N. W., out of view, but Barbara Towles returned to the apartment. About 7:15 p.m., Bernie King, Marcellus Winston, James Davis and Wilbert Gross, came out of this first floor apartment of 1623 O St., N. W., at which time Bernie King was carrying a large brown paper bag, believed to contain number slips or other numbers paraphernalia. Barbara Towles came to the door of the apartment but did not leave. Bernie King, Marcellus Winston, James Davis and Wilbert Gross, then got into the 1954 Plymouth, D. C. N-9928, which was operated by Larkin King, and they all drove off.

About 11:30 a.m., Jan. 26, 1954, Officer Robinson returned to 54 M St., N. W., janitor's quarters, and at this time contacted a colored woman, med. brown skin, 5'7", 28 yrs of age, 160 lbs., called Rene, who will hereinafter be referred to as Jane Doe #2, and as a result of conversation with this woman played with her the numbers 200 for 25 cents and 643 for 25 cents. Jane Doe #2 recorded them in a regular numbers book, giving Pvt Robinson a duplicate copy, which bore code number 54 in upper right-hand corner. He paid this woman the sum of 50 cents for the bets. About 1:30 p.m., this date, Bossy Glover was seen to park in unit block of M St., N. W., and enter the janitor's quarters of 54 M St., N. W. About 5 minutes later Glover came out and went to his car with pockets bulging and was followed

to North Capitol and P Sts., N. E., and seen to enter #5 P St., N. E. About 15 minutes later Glover returned to his car with pockets bulging, and drove to 1400 blk of 1st St., N. W. where James Davis entered Glover's car at this point, and they both then drove off. About 3:03 p.m., this date, Tri-Cab No. 130, operated by a colored man, described as dark brown skin, 35-40 yrs, 5'10", 190 lbs, wears eyeglasses, who will hereinafter be referred to as John Doe #1, was seen to stop his cab in front of 1304 Gallaudet St., N. E., at which time Larkin King was seen to come out of these premises with pockets bulging, enter this cab, and they both drove off. About 5 minutes later George Bell, who is the occupant of Apt 201, 1304 Gallaudet St., N. E., and who is a suspected numbers operator, came out of 1304 Gallaudet St., N. E., entered a 1952 Oldsmobile, D. C. Tags 1-2444, and drove off.

About 10:30 a.m., Jan. 27, 1954, Pvt. Robinson returned to janitor's quarters, 54 M St., N. W., contacted John Doe #2, and played with him numbers 200 for 10 cents, 643 for 15 cents, paying him the sum of 25 cents, which John Doe #2 recorded in a regular numbers book, and gave Pvt Robinson a duplicate slip with the code number 54 in upper right-hand corner. Pvt Robinson then left the premises. About 1:50 p.m., this date, Pvts. Thomas and Robinson observed Bossy Glover park in the unit block of M St., N. W., and enter 54 M St., N. W., janitor's quarters, remain inside about 10 minutes, return to his car and drive off. He was followed to vicinity of North Capitol and P Sts., N. E., where he got out of his car with pockets bulging, and entered #7 P St., N. E. About 15 minutes later Glover returned to his car with pockets still bulging, and was followed to 3rd and M Sts., N. E., where he met James Davis, who got into Glover's car, stayed about 2 minutes, got out, and then Glover drove away. Glover was then followed to vicinity of 11th & V Sts., N. W., where he parked his car with pants pockets bulging and entered the

rear of 2126 10th St., N. W. About 3:00 p.m., this date, Larkin King came out of premises 1304 Gallaudet St., N. E., and entered Tri-Cab No. 130, being operated by John Doe #1, who had stopped in front of 1304 Gallaudet St., N. E. They then drove off and about 5 minutes later George Bell came out of 1304 Gallaudet St., N. E., got in Oldsmobile, D. C. 1-2444, and drove off.

About 11:45 a.m., Jan. 29, 1954, Pvt Robinson returned to janitor's quarters at 54 M St., N. E., contacted Jane Doe #1, and played numbers 200 for 10 cents and 643 for 15 cents, paying her the sum of 25 cents. The numbers were written in a regular numbers book and Pvt Robinson was given a duplicate copy which bore code number 54 in upper right-hand corner, and the officer then left the premises. About 1:45 p.m., this date, Privates Thomas, Jefferson and Robinson observed Bossy Glover park his car in unit block of M St., N. W. Pvt Robinson followed him and observed him enter the janitor's quarters of 54 M St. N. W., where he remained about 10 minutes, came out with his pockets bulging, got in his car and drove off. About 2:30 p.m., this date, Pvt. Jefferson was in the vicinity of the 1300 block of Gallaudet St., N. E., and at this time observed Larkin King, driving Plymouth Sedan, N-9928, and he parked same alongside premises 1304 Gallaudet St., N. E., and then entered these premises. About 2:50 p.m., this date, Pvt. Jefferson observed Tri-Cab No. 130, being operated by John Doe #1, stop opposite 1304 Gallaudet St., N. E., at which time Larkin King came out of these premises with pockets bulging, got into this cab, and both drove off. About 3:05 p.m., this date, George Bell was seen to leave premises 1304 Gallaudet St., N. E., enter his car, and drive out of the area.

About 11:45 a.m., Jan. 30, 1954, Pvt Robinson returned to 54 M St., N. W., janitor's quarters, contacted Jane Doe #2, played with her the numbers 200 for 25 cents and 643 for 25 cents, paying her the sum of 50 cents. She recorded

these bets in a regular numbers book, gave Pvt. Robinson a duplicate slip bearing the code number 54 in upper right-hand corner, and the officer then left the premises. About 1:45 p.m., this date, Pvts. Thomas, Jefferson and Robinson observed Glover park in unit block of M St., N. W., and Robinson followed him and was able to observe him enter the janitor's quarters of 54 M St., N. W., where he remained about 10 minutes, came out with pockets bulging, got in his car, and drove off.

About 7:00 p.m., Feb. 1, 1954, Pvt. Robinson returned to 54 M St., N. W., janitor's quarters, contacted John Doe #2, played numbers 200 for 10 cents and 643 for 15 cents, with the understanding these numbers were to be played for Feb. 2nd and Feb. 3rd, 1954. Afterwards Pvt. Robinson gave John Doe #2 the sum of 50 cents for these plays and he wrote them on the back of a regular numbers book but Officer Robinson did not receive a receipt. Pvt. Robinson then left the premises. About 6:45 p.m., Feb. 1, 1954, Pvt. Thomas observed Larkin King, driving 1954 Plymouth, D. C. N-9928, park same in the 2100 block of 10th St., N. W., where he got out and entered premises 2126 10th St., N. W. About 7:00 p.m., this date, George Bell came out of 2126 10th St., N. W., carrying a brown paper bag, believed to contain number slips or numbers paraphernalia, got in his car, and drove off. About 20 minutes later, George Bell was observed to park his car in 1300 block of Gallaudet St., N. E., and enter 1304 Gallaudet St., N. E., Apt. 201, with the brown paper bag still in his possession.

As a result of number plays made by Private Robinson at 54 M St., N. W., janitor's quarters, and observations made of premises 1304 Gallaudet St., N. E., Apt. 201, it is also requested that arrest warrants be issued for Jane Doe #1, Jane Doe #2, John Doe #2, for violations of the lottery laws of the District of Columbia.

It is the belief of the officers that on all occasions where brown paper bags, pocketbooks, bulging coat pockets, pants

pockets, and cardboard boxes are mentioned, that they contain number slips or other numbers paraphernalia. It is also firmly believed that there is now being secreted on premises 1628 O St., N. W., first floor; 2126 10th St., N. W.; 54 M St., N. W.; janitor's quarters; 41 L St., N. W.; and 1304 Gallaudet St., N. E., Apt. 201, certain lottery tickets, books, papers, memorandums, or other devices commonly used in the operation of a policy lottery, and that all the aforementioned persons and automobiles are also engaged in the operation of a lottery in violation of the lottery laws of the District of Columbia. In addition, it is believed that at 41 L St., N. W., there is kept control and accounting records of the operation being conducted by Bossy Glover; and at 1304 Gallaudet St., N. E., Apt. 201, there is kept control and accounting records of the operation being conducted by George Bell.

Subscribed and sworn to before me this 3rd day of February 1954

/S/ Cyril Lawrence
U. S. Commissioner for the
District of Columbia
/S/ Pvt. Burtell M. Jefferson
MPDC Morals Division
/S/ Pvt. Generalee Robinson
MPDC Morals Division
/S/ Pvt. Tarver J. Thomas
MPDC Morals Division

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**SEARCH WARRANT**

To W. Bruce Matthews, U. S. Marshal, D. C., or any officer of the Metropolitan Police, D. C. Affidavit having been made before me by Pvts. Generalee Robinson, Burtell M. Jefferson and Tarver J. Thomas, Morals Div. MPDC, that

he has reason to believe that on the premises known as 2126 10th Street, N. W., (entire premises) Washington, in the District of Columbia there is now being concealed certain property, namely lottery tickets, lottery policies, or any book, paper, memorandum, or device used in setting up, promoting, or maintaining a policy lottery. The facts to sustain this are as set forth in the affidavit attached hereto and made a part hereof, which are in violation of DCC T. 22, Sec. 1501 and 1502. (Received Feb. 9, 1954) And as I am satisfied that there is probable cause to believe that the property so described is being concealed on the premises above described and that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the place named for the property specified, serving this warrant and making the search (in the daytime) and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

Dated this 3rd day of Feb. 1954.

/S/ Cyril Lawrence
U. S. Commissioner

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# In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 830

JEWEL C. WOODS, PETITIONER
*v.*
UNITED STATES OF AMERICA

MARCELLUS L. WINSTON, PETITIONER
*v.*
UNITED STATES OF AMERICA

BARBARA L. TOWLES, PETITIONER
*v.*
UNITED STATES OF AMERICA

OLIVER G. HOLSEY, PETITIONER
*v.*
UNITED STATES OF AMERICA

BOSSY GLOVER, PETITIONER
*v.*
UNITED STATES OF AMERICA

JAMES S. DAVIS, PETITIONER
*v.*
UNITED STATES OF AMERICA

GEORGE BELL, PETITIONER
*v.*
UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINIONS BELOW

The majority and dissenting opinions of the Court of Appeals (R. 2-18) are reported at 240 F. 2d 37. The

opinion of the District Court denying the motion to suppress is reported at 126 F. Supp. 612.

## JURISDICTION

The judgment of the Court of Appeals was rendered on December 31, 1956 (R. 19-20), and a petition for rehearing *en banc* was denied on February 8, 1957, two judges dissenting (R. 21). The petition for a writ of certiorari was filed on March 11, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTIONS PRESENTED

1. Whether lack of response by occupants to a knock on the door by officers executing a valid search warrant justified their entrance by pushing the door open.

2. Whether on a finding that the entry into one of five places was illegal, and that the evidence obtained thereby should be suppressed, the Court of Appeals was justified in reversing the conviction only as to the defendant arrested at the place of the illegal entry.

3. Whether there was sufficient probable cause for the issuance of a search warrant.

## STATUTE INVOLVED

18 U.S.C. 3109 provides:

> The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

STATEMENT

A thirty-one count indictment charged petitioners, and eleven codefendants, with a conspiracy to violate, and substantive violations of, the District of Columbia lottery laws, 22 D.C. Code 1501, 1502 and 1505 (Tr. 2158-2159).[1] Following a jury trial, petitioners were convicted under various counts of the indictment. All of the petitioners, and one Shay, were convicted under count 2 which charged them, and the other codefendants, with the operation of a lottery (Tr. 2164-2165, 2219, 2221-2222, 2224, 2226-2229).[2]

Petitioners and the codefendants unsuccessfully filed pre-trial motions to suppress certain evidence allegedly resulting from unreasonable searches and seizures on premises located at 1620 O Street, N.W., 54 M Street, N.W., 41 L Street, N.W., and 1304 Gallaudet Street, N.E., Washington, D. C., principally upon the grounds that the search warrants covering these premises were

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[1] The designation "Tr." refers to the stenographic transcript of the trial proceedings.

[2] They were sentenced to the following terms of imprisonment to run concurrently, except as stated:

*George Bell*—eight months to three years on each of counts one and two, and eight months on count twenty-six (Tr. 2219);

*James Davis*—eight months to three years on each of counts one and two, and eight months on count twenty-two (Tr. 2221);

*Bossy Glover*—six to eighteen months on each of counts one through ten, six months on each of counts twenty-four and twenty-nine, to run concurrently with each other, but to run consecutively with the sentences imposed on counts one through ten (Tr. 2222);

*Oliver Holsey*—seven to twenty-one months on each of counts two, twelve through sixteen, twenty-five and thirty (Tr. 2224);

*Barbara L. Towles*—six to eighteen months on each of counts one and two, and six months on each of counts twenty-two and twenty-seven (Tr. 2227);

*Marcellus Winston*—Ten to thirty months on count two, and one year on count twenty-two (Tr. 2228);

*Jewel C. Woods*—five to fifteen months on each of counts two and twenty-two (Tr. 2229).

executed illegally, and were not based on adequate probable cause. (Tr. 2176-2180).[3]

The evidence at the trial consisted for the most part of the reiteration by the officers of the observations on the basis of which the search warrants were obtained, and the evidence obtained by the warrants.

1. The affidavits on which the warrants were obtained recited in detail the observations of police officers over a two month period of various activities of the defendants which began with a surveillance of the activities of petitioner Glover, who, the officers had been informed, was writing and picking up numbers (Tr. 2264-2273). Glover was observed regularly leaving his home at 41 L Street, N.W., about 1:30 P.M., making a few short stops, including 54 M Street, N.W., and returning therefrom with his pockets noticeably bulging. About 2:30 P.M. he would contact petitioner James Davis, a known numbers pickup man, and give him a large brown paper bag. Davis would go to the premises at 1628 O Street, N.W. A number of other defendants, including petitioners Towles, Winston, and Woods, some known to be numbers operators, were seen entering the O Street premises, carrying either brown paper bags or a box or large pocketbooks. When they left the premises they were without the paper bags.

About 2:45 P.M. Glover would go to 1014 Euclid

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[3] The record and transcript do not show that any motion as such was filed challenging the legality of the search, also involved here, of premises located at 2126 10th Street, N. W., but the courts below treated the motions as covering the evidence seized at the 10th Street premise (R. 7, fn. 5). Defendants Owens and Wright who did not appeal, and who were arrested without a warrant at the time of the execution of the search warrant covering the 10th Street premise, unsuccessfully moved to quash their arrest and to suppress evidence seized pursuant thereto (see Tr. 2200-2201).

Street or 2126 10th Street, N.W.—usually the latter premises—which, the officers were reliably informed, were used as a numbers drop and counting house for the money received from number bets. The police also observed that usually about 3:00 P.M., or shortly thereafter, sometimes while Glover was still on the premises, defendants Shay and other unidentified persons entered the 10th Street premises either with bulging pockets or brown paper bags. When they left the premises they did not have the brown paper bags, and their pockets no longer bulged.

During the mornings or early afternoons of January 18, 19, 20, 21, 23, 26, 27, 29, and 30, and in the evening of February 1, 1954, officer Robinson purchased numbers plays from defendants Parker and Rosa Holsey, and petitioner Oliver Holsey at 54 M Street, N.W., janitor's quarters, usually paying 50 cents for the plays. On February 1 the numbers were played for February 2 and 3. These bets were recorded in a regular numbers book and the officer was usually given a duplicate slip bearing the code number 54.

The affidavit recited as follows (Tr. 2273):

> It is the belief of the officers that on all occasions where brown paper bags, pocketbooks, bulging coat pockets, pants pockets, and cardboard boxes are mentioned, that they contain number slips or other numbers paraphernalia. It is also firmly believed that there is now being secreted on premises 1628 O St., N.W., first floor; 2126 10th St., N.W.; 54 M St., N.W., janitor's quarters; 41 L St., N.W.; and 1304 Gallaudet St., N.E., Apt. 201, certain lottery tickets, books, papers, memorandums, or other devices commonly used in the opera-

tion of a policy lottery, and that all the aforementioned persons and automobiles are also engaged in the operation of a lottery in violation of the lottery laws of the District of Columbia. In addition, it is believed that at 41 L St., N.W., there is kept control and accounting records of the operation being conducted by Bossy Glover; and at 1304 Gallaudet St., N.E., Apt. 201, there is kept control and accounting records of the operations being conducted by George Bell.

2. On February 3, 1954, the five search warrants were simultaneously executed at about 4:00 p.m. (Tr. 872-873, 992, 1366-1368, 1670, 1762-1763, 1808-1809). At the O Street premises the officers knocked on the door twice and listened to it. They heard a radio playing inside. One of the officers then called out "Police, we have a search warrant." When no answer was received, one of them upon instruction broke the door down (Tr. 994). As the officers entered the front room, they saw no one, but heard persons running to the back of the apartment and found in the back rooms defendants Burnie King, Curtis, Gross, and Johnson, and petitioners Woods, Towles, Davis, and Winston for whom they had warrants of arrest (Tr. 993-996, 1004-1005, 1006). They served the search warrant on defendant King (Tr. 1096). As soon as the officers entered the apartment, it was clear that a large-scale numbers counting house was in operation. Numbers slips, of which 15,000 were seized, were in the process of being counted to determine "the amount of money owed the counting house by the individual writers or pick-up men. It hadn't been processed for hits." Some of the number slips had been

sorted and fastened into bundles with clips and rubber bands, and placed in bags. A large quantity of slips were spread out or were in baskets on six card tables, each of which was equipped with an adding machine whose tape indicated recent use, and a blanket to deaden the sound. One pile of slips bore the quotation "keep-ins", indicating plays paid in advance, and others bore the quotation "lead overlook", indicating winning numbers which had been overlooked. Burnt number slips were found in the furnace in the backroom (Tr. 1217). Numerous run-down tapes were found. These tapes, which are usually returned to the writers with the "hit" money, contained code symbols relating to individuals and pay-off notations, and indicated the total amount of plays, the net amount owed the backer, and the amount won. On some of the slips and tapes appeared the symbols "54", "B", or "B-40", the same symbols as those on the receipts given to officers on plays purchased by them from petitioners Holsey (see *supra*, p. 5) and Glover (see *infra*, p. 8, fn. 4). The Symbol "K" also appeared on a large number of the slips. The apartment also contained notebooks which contained records of the "hit" numbers for several days and the amount of payments for the "hit" numbers to various code symbols, coin envelopes, clips, rubber bands, staplers, and numbering machines which also facilitate the operation of a counting house (Tr. 996-998, 1004, 1005-1011, 1020-1021, 1033-1052, 1058-1070, 1128, 1195-1198, 1206-1210, 1215-1217, 1220, 1222, 1230, 1245-1247, 1248-1249, 1256-1263, 1897-1899).

The number slips seized from the premises represented a play of $8,896.14 for February 1 (Tr. 1206), $8,450.75 for February 2 (Tr. 1261), and $7,969.73 for

February 3 (Tr. 1261-1262). The code symbols on them represented about 285 different number writers (Tr. 1263). One of the slips covered number 634 which was the winning number of February 1, 1954 (Tr. 1087-1089). Included in the slips seized were those reflecting some of officer Robinson's plays in February 1954 (Tr. 1252-1254, 1255-1256).[4]

At the questioning of the persons arrested at the O Street premises, petitioner Davis stated that he was in the numbers business (Tr. 1578-1579).

A search of the arrested persons revealed numbers slips and a key to the O Street premises on defendant Burnie King (Tr. 1230-1232, 1233); a key to the O Street premises and run-down tape bearing numbers play on petitioner Davis (Tr. 1236-1237); numbers slips and a run-down tape on petitioner Woods (Tr. 1238); a small pad bearing numbers play on defendant Johnson (Tr. 1339); slips of paper bearing plays on defendant Gross (Tr 1240); lottery slips and telephone and rent receipts made out to one Lewis covering the O Street premises, on petitioner Towles[5] (Tr. 1240-1241, 1244); and a small paper bag which con-

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[4] On February 3, 1954, about 12:30 p. m., officer Robinson made number plays with petitioner Oliver Holsey at 54 M Street, N. W., and paid for them with 4 one-dollar bills whose serial numbers were recorded. He received a receipt for them, with the code symbol 54 on it (Tr. 755-756). On eight days between December 12 and 29, 1953, officer Stewart purchased numbers plays from petitioner Glover, for which the officer received 49 numbers slips receipts, some bearing the symbol "B-40" or "B". Some of the numbers won and the officer received his winnings from petitioner Glover (Tr. 792-794, 796-803, 806-827).

[5] Other evidence as to Towles' occupancy of the O Street premises was also adduced (Tr. 1056-1058, 1240-1244, 1845-1847, 1851, 1890).

tained run-down tapes with various codes and a numbers cut-card [6] on defendant Curtis (Tr. 1247).

The officers executing the search warrant covering the premises located at 2126 10th Street knocked at the front door two or three times. They heard no noise within and received no response. One of the officers upon instructions to break open the door, "pushed the door open with his hand, the back of his hand, and the door flew open" (Tr. 1369). In the dining room they found defendants Shay, Larkin King, Wright, and Owens whom they arrested. A search of the premises revealed an adding machine, several numbers slips, rolls of adding machine tape, boxes of coin envelopes, rubber bands, paper clips, two tapes which showed the total mutuels on the first three races that day and a computation from them of the winning number, a racing sheet, and a paper bag which contained $786.13 and an adding machine tape totalling the money in the bag. Defendant Larkin King claimed ownership of the $786 (Tr. 1583). Three dollars of the $786 was part of the four dollars which officer Robinson paid petitioner Holsey for the numbers play that day (Tr. 1370-1372, 1481-1486, 1490-1491, 1510-1511, 1513-1514, 1515, 1516-1518, 1583, 1585, 1649-1653, 2275).

At the premises located at 54 M Street, basement apartment, the officers executing the warrant found the door open with petitioner Holsey in the front room. They advised Holsey that they were police officers and had a search warrant covering the premises (Tr. 1670-1671). In searching the premises, the

[6] A cut-card is one that lists numbers on which less than full odds (600 to 1) are paid.

officers found and seized numbers slips, envelopes with numbers plays written on them, and numbers books with different serial numbers and with the code symbol "54" on some. One of the books contained the slip reflecting officer Robinson's play purchase of the day from petitioner Oliver Holsey. The officers also found defendant Parker on the premises (Tr. 1672, 1722-1723, 1731-1733, 1759). After arresting Holsey, the officers found in his wallet the fourth dollar bill which was used in the purchase by officer Robinson of the numbers play that day from Holsey, a paper with numbers play on it, numbers slips and numbers book bearing the code symbol "54" (Tr. 1672-1673, 1720-1721).

In executing the warrant covering 41 L Street, N.W., Glover's residence, the officers knocked on the door and it was opened by Mrs. Glover. She admitted the officers to the premises, and they advised her that they had a search warrant (Tr. 1762-1763). Petitioner Glover came home immediately thereafter. He was advised of the search warrant, and also arrested under an outsanding warrant (Tr. 1764).

The search of Glover's residence revealed numbers books, numbers slips, cut-cards, run-down tapes, paper bags with number plays on them, and notebooks, on some of which the code symbol "B-40" appeared (Tr. 1770-1783, 1791).

A search of Glover revealed a notebook which contained code numbers and other figures, and a numbers book bearing the code symbol "B-40" (Tr. 1765, 1767-1768). He told the officers that he was in the numbers business and sold between $40 and $45 of numbers slips per day. In petitioner Davis' presence, he

said that he turned his numbers "work" to Davis and his numbers money to defendant James Shay at 2126 10th Street (Tr. 1543, 1559, 1561-1566).

In executing the search warrant covering the premises located at 1304 Gallaudet Street, N.E., the officers were met at the door by petitioner Bell's wife, Mary. After showing her the warrant, they searched the premises and found an adding machine, a metal box which contained two numbers books, one with the symbol "K" on them, money, numbers slips and run-down tapes, cut cards and a notebook record of numbers and amounts, a carton of coin envelopes, a bag of coin wrappers, another numbers book, and such items as pencils, clips, and rubber bands. The number slips in the metal box were totalled on the run-down tapes, and the amount of money in the box corresponded to the totals on the tapes (Tr. 1809, 1833-1835). Petitioner Bell said that he had been writing numbers for about a month and that his daily book amounted from $30 to $35 a day (Tr. 1124-1126).

3. On appeal, the majority and dissenting opinions of the court below (R. 2-18) held that since the officers in executing the warrant at 2126 10th Street, N.W. pushed the door open without first stating their identity and purpose, when no response was received to their knocks, they acted in violation of 18 U.S.C. 3109, and the evidence seized therefrom was inadmissible as the result of an unlawful entry. The majority further held that the inadmissible evidence was prejudicial to defendant Shay because he was arrested there, but that it was not prejudicial to petitioners because the material seized therein was "insignificant compared with the masses of material seized at" the

four other premises (R. 4-7). The dissent felt that in the light of the interrelationship of the five premises raided, and the police officers' observations of some of the petitioners' use of the 10th Street premises, the petitioners might have been prejudiced by the admissibility of the evidence seized at the 10th Street premises.

ARGUMENT

1. We think that the decision below was unduly favorable to petitioners in holding that the entry into the 10th Street premises was invalid. The provision in Section 3109 for announcement of the officers' purpose was designed to require that information be given to someone, not to empty air. Blank silence, either because the occupant fails to respond to the knock, or because he has absented himself from the premises, is tantamount to a refusal to admit any caller, regardless of his errand or authority, and justifies a breaking of the door by officers holding a valid search warrant. See *United States* v. *Camarota,* 278 Fed. 388 (S.D. Calif.), interpreting this statute to avoid the result reached by the court below. See also *Barrientes* v. *United States,* 235 F. 2d 116 (C.A. 5), certiorari denied, 352 U.S. 879, and Rule 41(d), F.R. Crim. P., which contemplates the execution of a search warrant in the absence of the occupant. Furthermore, here, the officers merely pushed the door open. State courts interpreting comparable statutes have ruled that similar situations constituted sufficient compliance with such statutes. *Collins* v. *State,* 184 Tenn. 356, 199 S.W. 2d 96; *Thigpen* v. *State,* 51 Okla. Cr. 28, 299 Pac. 230; cf. *Hiller* v. *State,* 190 Wisc. 369.

2. On the basis of the decision below, the majority were clearly correct in holding that, as to these peti-

tioners, the admission of the evidence seized at the 10th Street premises could not have prejudiced them. The largest volume of evidence establishing the operation of a lottery was seized at the O Street premises. Petitioners, other than Glover, Holsey, and Bell, were all arrested there. The three not so arrested were connected with those premises by the observations of the officers and by some of the evidence seized there bearing the symbols "K", "54", "B" or "B-40". Glover, Bell, and Holsey were all implicated by the evidence found at their homes, Glover and Bell by their admissions, and Glover and Holsey by the fact that officers placed bets with them (see the Statement, *supra*, pp. 5, 8, fn. 4).

3. Petitioners' attack (Pet. 11-16) upon the sufficiency of the probable cause of the affidavit upon which the search warrant covering the premises located at 1628 O Street, N.W. was based is without substance. From a reading of the affidavit (Pet. App. 2-22) it is hard to conceive of a more clear-cut case of sufficient probable cause for the issuance of a search warrant than was involved here. "Probable cause exists where 'the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed". *Brinegar* v. *United States*, 338 U.S. 160, 175-176. The existence of probable cause does not require the officers to possess legal evidence to convict. *Id.* Here the affidavit recites in detail the police officers' observations of petitioners, and the premises for which search warrants were issued, over a 2½ month period. The inclusion in the affidavit of factual conclusions and characteriza-

tions of some of the persons surveilled such as "George Bell, a suspected numbers writer" (Pet. App. 7) and "Bernie [*sic*] King, Marcellus Winston, Wilbert Gross, and James Davis, all known numbers operators" (Pet. App. 10) is perfectly proper, particularly here where the affidavit consisted largely of actual observations. In determining the existence of probable cause, courts have consistently permitted officers to draw upon their past experience, information, and common knowledge. See *Brinegar* v. *United States,* 338 U.S. 160, 162; *Carroll* v. *United States,* 267 U.S. 132; *Washington* v. *United States,* 202 F. 2d 214 (C.A. D.C.), certiorari denied, 345 U.S. 956.

Petitioner's further argument that the search warrant was invalid because the affidavit alleged facts showing the commission of a misdemeanor rather than a felony ignores the recitation therein indicating the commission of a felony (22 D.C. Code 1501). Rule 41(b), F.R. Crim. P., authorizes, without specification as to the type of crime, the issuance of a warrant for the search and seizure of any property "[d]esigned or intended for use or which is or has been used as the means of committing a criminal offense." *Clay* v. *United States,* 239 F. 2d 196 (C.A. 5), upon which petitioners rely (Pet. 13), involves a search without a warrant where there was no evidence that defendant was committing any crime—misdemeanor or felony—when he was searched.

## CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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